

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Chapter 11

ORION REFINING CORPORATION,

Case No. 03-11483 (MFW)

Debtor.

In re:

Civil Action No. 06-413 (KAJ)

FLUOR ENTERPRISES, INC

Appellant,

v.

**ORION REFINING CORP., CYPRESS,
ASSOCIATES, LLC**

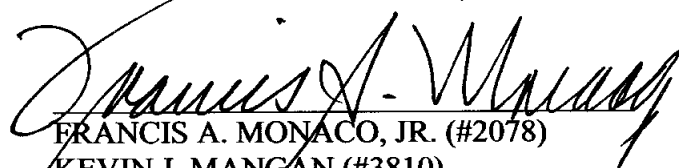
Appellees

**APPELLANT'S MOTION FOR ORDER DISMISSING
APPEAL WITHOUT PREJUDICE**

For reasons stated in the accompanying Memorandum, Appellant Fluor Enterprises, Inc., by and through its undersigned counsel, respectfully moves the Court pursuant to Fed. R. Bankr. P. 8001(c) for entry of an order dismissing this appeal without prejudice.

Dated: August 2, 2006

MONZACK AND MONACO, P.A.


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Attorneys for Fluor Enterprises, Inc

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	:	
v.	:	
	:	
ORION REFINING CORP., CYPRESS,	:	
ASSOCIATES, LLC	:	
	:	
Appellees	:	
	:	
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CERTIFICATE OF SERVICE

I, Heidi E. Sasso, certify that I am not less than 18 years of age, and that service of the attached document was made via hand delivery on August 2, 2006 upon:

William H. Sudell
Gregory W. Werkheiser
Morris, Nichols, Arsht & Tunnell
1201 N. Market Street
Wilmington, Delaware 19899

Under penalty of perjury, I declare that the foregoing is true and correct.

August 2, 2006
Date

/s/ Heidi E. Sasso
Heidi E. Sasso

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ASSOCIATES, LLC**

Appellees

**ORDER DISMISSING APPEAL
WITHOUT PREJUDICE**

This matter was before the Court on the motion by the appellant Fluor Enterprises, Inc. for entry of an order dismissing the captioned appeal without prejudice. From a review and consideration of the pleadings and arguments of counsel, it appears to the Court:

1. This is an appeal from an order of the Bankruptcy Court granting the defendant/appellee's motion for partial summary judgment on two of four counts asserted by the plaintiff/appellant in its complaint in the pending adversary proceeding. Each of the four counts expresses a different theory for recovering the same claim against the

defendant. Because the Bankruptcy Court's order did not resolve all of the issues relating to that claim, it is an interlocutory order.

2. Because proceedings will continue in the Bankruptcy Court on the remaining counts in the adversary proceeding, among other reasons, it would serve no useful purpose for this Court to grant leave for the appeal from the Bankruptcy Court's interlocutory order to go forward in this Court. See 28 U.S.C. 158(a)(3).

3. Dismissal of an appeal from an interlocutory order is, by its very nature, without prejudice.

3. Under Fed. R. Bankr. P. 8001(c)(2), "[a]n appeal may be dismissed on motion of the appellant on terms and conditions fixed by the district court."

It is therefore hereby

ORDERED that the captioned appeal be and the same is hereby dismissed without prejudice.

Dated: _____.

United States District Judge